

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:TEGE:EB:QP2  
PLR-113128-06

Date:  
September 11, 2006

Legend:

Participant =

Employer =

EIN =

State X =

Plan =

Dear :

This is in response to your letter dated January 30, 2006, and subsequent correspondence on behalf of the above-referenced Employer requesting a ruling on the federal income tax consequences of Employer's Deferred Compensation Plan.

Employer provides services job training, educational services, and other services to adults needing assistance in these areas. The Plan was adopted effective January 1, 2004.

Employer represents that it is a tax-exempt organization under section 501(c)(3) of the Internal Revenue code of 1986 (the Code), as amended under the Economic Growth and Tax Reconciliation Act of 2001 (EGTRRA), and an eligible employer under section 457(e)(1)(B) of the Code. Employer established the Plan, which it intends to be an eligible deferred compensation plan under section 457(b) of the Code, to provide Participant with additional deferred compensation. Employer created a bookkeeping account and credits a predetermined contribution to the Plan every year. The amount of the predetermined contribution may be changed by an amendment to the Plan. The

new contribution amount will take effect the first day of the calendar month next following the date of the amendment.

The Plan allows a maximum amount to be deferred by Participant in any calendar year and also provides for a catch-up contribution for amounts deferred for one or more of the participant's last three taxable years ending before Participant attains normal retirement age under the Plan. The amounts which may be deferred are within the limitations set forth in section 457 of the Code.

In general, Participant's account balance will be distributed after she has severed employment with Employer. Participant may, however, receive a distribution of all or any portion of Participant's account balance, limited to an amount necessary to alleviate an unforeseeable emergency.

The Plan provides that all amounts deferred under the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights will remain (until made available to Participant or beneficiaries) solely the property and rights of Employer, subject only to the claims of Employer's general creditors. Neither Participant nor her beneficiaries shall have any right to commute, sell, transfer, assign, pledge, attach or otherwise convey the right to receive any payments under the terms of the Plan, except as may be provided in a qualified domestic relations order as defined in section 414(p) of the Code.

Section 83(a) of the Code provides that the excess (if any) of the fair market value of property transferred in connection with the performance of services over the amount paid (if any) for the property is includible in gross income of the person who performed the services for the first taxable year in which the property becomes transferable or is not subject to a substantial risk of forfeiture.

Section 1.83-3(e) of the Income Tax Regulations (regulations) provides that for purposes of section 83 of the Code, the term property includes real and personal property other than money or an unfunded and unsecured promise to pay money or property in the future. Property also includes a beneficial interest in assets (including money) transferred or set aside from claims of the transferor's creditor, for example, in a trust or escrow account.

Section 451(a) of the Code and section 1.451-1(a) of the regulations provide that an item of gross income is includible in gross income for the taxable year in which actually or constructively received by a taxpayer using the cash receipts and disbursements method of accounting. Under section 1.451-2(a) of the regulations, income is constructively received in the taxable year during which it is credited to a taxpayer's account or set apart or otherwise made available so that the taxpayer may draw on it at any time. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Under the economic benefit doctrine, an employee has currently includible income from an economic or financial benefit received as compensation, though not in cash form. Economic benefit applies when assets are unconditionally and irrevocably paid into a fund or trust to be used for the employee's sole benefit. *Sproull v. Commissioner*, 16 T.C. 244 (1951), aff'd. per curiam, 194 F.2d 541 (6th Cir. 1952); Rev. Rul. 60-31, situation 4. In Rev. Rul. 72-25, 1972-1 C.B. 127, and Rev. Rul. 68-99, 1968-1 C.B. 193, an employee does not receive income as a result of the employer's purchase of an insurance contract to provide a source of funds for deferred compensation because the insurance contract is the employer's asset subject to claims of the employer's creditors.

Section 457 of the Code provides rules for the deferral of compensation by an individual participating in an eligible deferred compensation plan (as described in section 457( b)).

Section 457( a)(1)(B) of the Code provides that in the case of a participant in an eligible deferred compensation plan of a tax-exempt employer, any amounts of compensation deferred under the plan and any income attributable to the amounts so deferred shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or beneficiary.

Section 457( b)(5) of the Code prescribes that an eligible deferred compensation plan must meet the distribution requirements of section 457(d).

Section 457( b)(6) of the Code requires an eligible plan of a tax-exempt employer to provide that i) all amounts of compensation deferred under the plan, ii) all property and rights purchased with such amounts, and iii) all income attributable to such amounts, property, or rights must remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the employer's general creditors.

Section 457( d)(1)(A) of the Code provides that for a section 457 plan to be an eligible plan, the plan must have distributions requirements providing that under the plan amounts will not be made available to participants or beneficiaries earlier than i) the calendar year in which participant attains 70-1/2, ii) the calendar year when the participant has a severance from employment with the employer, or iii) when the participant is faced with an unforeseeable emergency as determined under Treasury regulations.

Section 1.457-7(c)(1) of the regulations states that amounts deferred (including amounts previously deferred) under an eligible plan will not be considered made available to the participant solely because the participant is permitted to choose among various investment modes under the Plan for the investment of such amounts.

Based upon the information submitted and representations made, we conclude as follows:

1. The Plan constitutes an eligible deferred compensation plan as defined in section 457( b) of the Internal Revenue Code of 1986, as amended under the EGTRRA.
2. Amounts of compensation deferred pursuant to the Plan, including any income attributable to the deferred compensation, will be includible in the gross income of the recipient only for the taxable year or years in which such amounts are paid or otherwise made available to Participant or beneficiaries in accordance with the terms of the Plan.
3. The adoption of the Plan will not result in a transfer of property for purposes of section 83 of the Code or section 1.83-3(e) of the regulations.
4. The adoption of the Plan will not cause any amount to be included in the gross income of Participant or beneficiaries under the cash receipts and disbursements method of accounting, pursuant to either the constructive receipt doctrine of section 451 of the Code or the economic benefit doctrine.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the Plan described above. Except as specifically ruled upon above, no opinion is expressed as to the federal income tax consequences of the Plan. In addition, this ruling applies only to amounts deferred (including the earnings thereon) after the date this ruling is issued. The Service expresses no opinion as to the consequences of the arrangement under Title I of the Employee Retirement Income Security Act of 1974. If the Plan is significantly modified, this ruling will not necessarily remain applicable.

This ruling is directed only to Employer and applies to the plan as submitted by a transmittal letter dated January 30, 2005. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

ROBERT D. PATCHELL  
Chief, Qualified Plans  
Branch Two  
Office of the Division

Counsel/Associate Chief Counsel  
(Tax Exempt and Government  
Entities)

Enclosures:

Copy of letter

Copy of letter for section 6110 purposes

cc